

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES HAYES,	§
	§
Defendant Below-	§ No. 580, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 93007853DI
Plaintiff Below-	§
Appellee.	§

Submitted: October 22, 2009  
Decided: November 4, 2009

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 4<sup>th</sup> day of October 2009, it appears to the Court that:

(1) On October 5, 2009, the Court received appellant's notice of appeal from a Superior Court order, dated August 18, 2009, which sentenced appellant on a probation violation. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before September 17, 2009.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing appellant's counsel to show cause why the appeal should not

be dismissed as untimely filed.\* Counsel filed a response to the notice to show cause on October 22, 2009, stating that the Public Defender's office does not have a file on the appellant and he does not recall whether the appellant timely requested counsel to file a notice of appeal on his behalf. Counsel requests that the matter be remanded to the Superior Court to vacate its August 18 sentencing order and to resentence appellant, so that he may pursue a timely appeal. The State does not oppose this request.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's August 18, 2009 sentencing order is hereby VACATED, and the matter is REMANDED for resentencing. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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\* Del. Supr. Ct. R. 6(a)(ii).